UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Midcontinent Independent System Operator, Inc.	))	Docket No. ER18-1173-000

MOTION TO FILE COMMENTS OUT OF TIME AND COMMENTS OF THE ILLINOIS COMMERCE COMMISSION

Pursuant to Rules 211 and 212 of the Federal Energy Regulatory Commission's ("Commission") Rules of Practice and Procedure, 18 C.F.R. §§ 385.211, 385.212, and the Notice of Filing issued on March 26, 2018,the Illinois Commerce Commission ("ICC") respectfully submits the following Motion to File Comments Out of Time and Comments regarding the Section 205 filing on the locational aspect of resource adequacy that the Midcontinent Independent System Operator, Inc. ("MISO") submitted on March 26, 2018, in the above captioned docket ("March 26 Filing"). The ICC filed an electronic Notice of Intervention in this docket on April 12, 2018, and therefore, is a party to the docket.

I. MOTION TO FILE OUT OF TIME

Pursuant to Rule 212 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.212, the Illinois Commerce Commission ("ICC") hereby submits this motion to file comments three days out of time in the above-captioned docket. Given the ICC's administrative process, and state rules and regulations, it was unable to meet the April 16, 2018 comment date.

With these comments, the ICC does not wish to disrupt or delay the proceedings. Rather, the ICC wishes to assist the Commission in its decision making process. The ICC is commenting on the limited issue of MISO's proposed Historic Unit Considerations ("HUCs") and the resulting harm to customers across the region but especially in retail access states. Because MISO's proposed revisions could have significant negative impacts in Illinois, the ICC believes that its comments will help the Commission in its deliberations and are in the public interest. Therefore, good cause exists to grant this motion.[1] The ICC does hereby so move.

II. MISO'S MARCH 26 FILING

The March 26 Filing proposes to revise certain locational aspects of MISO's resource adequacy construct of its Open Access Transmission, Energy and Operating Reserve Markets Tariff ("Tariff") to align auction inputs and pricing for internal and external resources and address potential risks those design changes may impose for pre-existing long-term capacity arrangements.[2] MISO indicates that it seeks these changes to address transparency concerns with respect to the treatment of external resources, particularly with respect to some concerns that external resources may be displacing local resources and leading to potential pricing inequities.[3] Specifically, MISO seeks to create External Resource Zones ("ERZs"), allocate excess auction revenues to certain Load Serving Entities ("LSEs") through HUCs, and align parameters used to calculate auction inputs such as Capacity Import Limits ("CIL"), Capacity Export Limits ("CEL"), and Local Clearing Requirements ("LCR") with the use of these limits in the Planning Resource Auction ("PRA").[4]

With respect to the HUC proposal, MISO states that the creation of ERZs warrants the development of HUCs as a replacement for the Grandmother Agreement provisions that provided LSEs with historic supply arrangements sourced from a MISO zone other than the

[1] *See Trans Alaska Pipeline System, et al.*, 104 FERC ¶ 61,201, at 61,706 (2003) and Natural Gas Pipeline Company of America, 66 FERC ¶ 61,310 (1994) (motion granted for good cause shown).
[2] March 26 Filing, at 1.
[3] March 26 Filing, at 2-3.
[4] March 26 Filing, at 1.

LSE's load zone a temporary hedge against price separation in the PRA.[5] Under MISO's March 26th proposal, if zonal prices in the PRA separate, LSEs with historic supply arrangements such as Grandfather Agreements, pre-zonal capacity contracts, or pre-ERZ contracts with external resources would receive priority rights to receive excess auction revenue.[6] Any excess auction revenue remaining after the allocation to holders of HUCs, would be allocated by the existing Zonal Deliverability Benefit *pro rata* mechanism. However, if the excess revenue does not fully fund all eligible HUCs, MISO will allocate revenues on a MW-weighted basis among those holding HUC hedges and non-HUC holders will receive no revenue.[7]

MISO requests an effective date of May 30, 2018, to allow for the inclusion of these provisions in the PRA for the 2019/2020 planning year.[8]

The ICC's comments herein are focused on the HUC element of MISO's March 26 Filing. The ICC recommends that the Commission reject the HUC proposal. The HUC proposal, among other things, creates undue preference for LSEs with HUC-eligible contract/ownership arrangements, and discriminates against LSEs without such contracts, in violation of the Federal Power Act, and it mutes the locational price signals directed by the Commission. With this proposal, MISO attempts to resurrect historic advantages and preferences that are unduly discriminatory across the region and especially in retail access states like Illinois. Moreover, this proposal provides free hedges to some load in a zone at the expense of other load in the zone.

[5] March 26 Filing, at 5-6.
[6] March 26 Filing, at 6.
[7] March 26 Filing, at 6.
[8] March 26 Filing, at 1.

III. COMMENTS

A. MISO's HUC Proposal Would Grant Undue Preference in Violation of the Federal Power Act.

MISO's HUC Proposal provides undue preference to preferred LSEs and unduly discriminate against others, and their customers, in violation of the Federal Power Act ("FPA") requirement that rates be just and reasonable and not unduly preferential or prejudicial.[9] Rather than giving preferential treatment to those LSEs with historic supply arrangements, excess capacity auction revenue should be allocated, first to LSEs that fund transmission upgrades that increase zonal import capability into a constrained zone and then to all LSEs pro-rata to their load in the zone. In other words, MISO should retain the status quo.

It is reasonable for MISO to provide hedge rights against zonal capacity price separation costs to LSEs that fund network transmission upgrades, as the upgrades increase the capability to import capacity into a zone and provide an incentive for investment in the transmission system. With respect to transmission import capability not linked with specific participant-funded transmission facilities, it is important to recognize that: (1) all load in a zone has borne an equivalent burden of paying for the transmission infrastructure that enables such zonal import capability, either through network transmission service or firm point-to-point service; and (2) that all load in the zone will equally bear the residual responsibility for the costs of sunk transmission infrastructure going forward. MISO's HUC proposal would effectively give a select minority of LSEs priority access to valuable constrained transmission import capability into the zone in the form of a hedge, or financial offset against zonal constraint cost. While MISO characterizes this as an "improved allocation of excess auction revenues"[10], granting such

[9] FPA, 16 U.S.C.S. § 824d(a),(b).
[10] March 26 Filing, Rauch Testimony, at 19.

unearned preference mutes the intended locational price signal and is unduly discriminatory and inequitable to all other network load in the zone.

Transmission infrastructure and the corresponding ability to import capacity into the zone is a valuable product/service that provides value that rightfully should be shared equally among all LSEs that bear the cost burden associated with the transmission system. MISO's current practice of pro-rata distribution of the zonal-delivery benefit ("ZDB") reflects this principle and MISO's proposal to provide free hedges to preferred LSEs, and their customers, does not. Rather, MISO's proposed HUC and MISO's proposed method for HUC allocation unduly discriminate, as they effectively allow one subset of load within the zone to expropriate the value of the transmission system that should accrue to all load within that same zone.

MISO's HUC proposal is unduly discriminatory in all cases, but more so in constrained zones with retail competition. In those zones, MISO's HUC proposal will inappropriately skew competition for customers because alternative retail suppliers are less likely to rely on historical, long-term, out-of-zone supply contracts than traditional utility LSEs. Consequently, alternative retail suppliers are less likely to be eligible for the hedges under MISO's HUC proposal, additionally raising costs for those LSEs in the form of greater exposure to elevated capacity costs arising from zonal transmission constraints.[11] MISO's HUC proposal results in undue discrimination and prejudice, particularly in states with retail competition, and is in violation of the Federal Power Act's requirement that the rates, and all rules and regulations affecting or

[11] We say "additionally" here because some set of customers will have to bear the zonal price separation costs that the HUC holders would be avoiding, <u>in addition</u> to bearing their pro rata share of those costs. Under MISO's HUC proposal, that burden naturally falls on the remaining customers in the constrained zone.

pertaining to such rates or charges, be just and reasonable and not unduly preferential or prejudicial.[12]

B. MISO's Proposed HUC Hedge Is Not Meaningfully Different From MISO's Previously Proposed Grandmother Agreement Hedge That The Commission Rejected.

Despite MISO's efforts to distinguish the two, MISO's proposed HUC hedge is not meaningfully different from MISO's previously proposed Grandmother Agreement hedge, that the Commission rejected.[13] MISO proposes to provide LSEs with historic long-term ownership and contractual arrangements a hedge against costs of zonal price separation which MISO characterizes as an "unforeseen risk".[14] MISO states that HUC hedge eligibility will be given to LSEs with ownership or contractual arrangements, including: (a) Grandfathered Agreements; (b) arrangements that predate July 20th, 2011; and (c) arrangements that predate March 26, 2018, and pertain to External Resources which meet four criteria.[15] MISO made a similar hedge proposal in 2012, generally applying to the same set of resources captured in (a) and (b) in the preceding sentence.[16] In 2012, MISO called it the "Grandmother Agreement" hedge proposal.[17] Ultimately, the Commission rejected MISO's Grandmother Agreement proposal, finding that

---

[12] 16 U.S.C.S. § 824d(a),(b).

[13] *See*, proposed Section 69A.7.7(a), Midwest Independent Transmission System Operator, Inc. Filing to Enhance RAR by Incorporating Locational Capacity Market Mechanisms; FERC Docket Nos. ER08-394-004; ER08-394-005; ER08-394-021; ER08-394-022; ER08-394-028; ER08-394-029; and ER11-4081-000; filed July 20, 2011.

[14] March 26 Filing, Rauch Testimony, at 20.

[15] *See*, March 26 Filing, Proposed tariff, Section, 69A.7.7(a). The proposed four criteria are: (1) An LSE must have PRMR that is in an LRZ distinct from the ERZ or LRZ where the Planning Resource is located; (2) HUCs can only be granted in amounts less than or equal to the PRMR being served by the LSE; (3) The arrangement must have either long-term firm transmission service from the Planning Resource to the LRZ containing the LSE's demand and associated PRMR, Network Resource Interconnection Service, or some combination of the two; and (4) The arrangement must be on-going.

[16] *See*, Midwest Independent Transmission System Operator, Inc. Filing to Enhance RAR by Incorporating Locational Capacity Market Mechanisms; FERC Docket Nos. ER08-394-004; ER08-394-005; ER08-394-021; ER08-394-022; ER08-394-028; ER08-394-029; and ER11-4081-000; filed July 20, 2011.

[17] *Id*, at 13.

proposal would have allowed LSEs to avoid using deliverability as part of their resource planning analysis, negating the purpose and reliability benefits of the locational market mechanisms which the Commission had directed.[18] The Commission did provide LSEs that historically relied on remote generation a two-year transition period to adjust their resource portfolio.[19] That adjustment period ended in 2015.

MISO argues that the current HUC proposal is different from the 2012 Grandmother Agreement proposal in that HUCs: (1) will not require uplift; (2) will not waive transmission constraints; and (3) apply to a small set of resources.[20] However, MISO's approach remains discriminatory and would circumvent the Commission's order to end historic advantages and preferences of the Grandmothered Agreements in 2015.

First, MISO states that HUCs will be settled after the PRA through the allocation of excess auction revenue and it will not rely on uplift to guarantee full compensation for HUC holders if there is insufficient excess auction revenue.[21] Yet, MISO also states that it would be an "unlikely event" that there would be insufficient revenues to fully fund the HUCs.[22] So, this distinction between the Grandmother Agreements and HUCs is without merit and indicates that HUC holders will likely always be fully hedged, at the expense of the other LSEs in the zone.

Second, MISO's argument that transmission constraints will not be waived through CIL and CEL adjustments to facilitate the HUC hedges, whereas, they, apparently, were waived to facilitate the Grandmother hedges, may be a reason to favor the CIL and CEL modifications that MISO is also proposing in its March 26 Filing, but is not a reason supporting the argument that

[18] *Midwest Independent Transmission System Operator, Inc*. 139 FERC ¶ 61,199 (2012) ("June 11 Order"), at P 113.
[19] June 11 Order, at P 113.
[20] March 26 Filing, Rauch Testimony, at 21.
[21] March 26 Filing, Rauch Testimony, at 21.
[22] March 26 Filing, Rauch Testimony, at 21.

HUC hedges are better (e.g., less harmful to locational price signals and less discriminatory) than Grandmother Agreement hedges. Rejection of MISO's HUC proposal will not impact the reasonableness of the proposed CIL and CEL modifications in MISO's March 26 Filing.

Third, MISO estimates that no more than five percent of total cleared capacity resources would be eligible for HUCs.[23] While MISO implies that the amount of HUC megawatts relative to all cleared capacity is a *de minimis* amount, five percent is significant[24] and could have an enormous impact, particularly if it is concentrated in a limited number of constrained zones. It should also be noted that MISO's proposed eligibility for HUCs is open-ended. MISO does not limit HUC eligibility to Grandfathered Agreements; arrangements that predate July 20, 2011; and arrangements that predate March 26, 2018, and pertain to External Resources which meet four criteria. Rather MISO's proposed tariff states that those three types of contractual/ownership arrangements will be included in HUC eligibility, but leaves the door open to unlimited, unnamed other categories.[25] Presumably, MISO's five percent estimate includes only the three identified categories of contract/ownership arrangements. By including the word "including" in the description of HUC hedge eligibility in proposed tariff Section 69A.7.7(a), MISO's HUC eligibility tariff language, however, does not limit expansion of HUCs. This expansion is completely under MISO's discretion, even accounting for the natural falling off of old contracts as their terms expire.

MISO states that, "The creation of ERZs will introduce price risk that could not have been foreseen" by MISO LSEs and that "unforeseen price separation risk" warrants the granting

[23] March 26 Filing, Rauch Testimony, at 21.

[24] For example, MISO cleared almost 135,000 MWs of capacity during the 2017-18 PRA. So, using MISO's 5% estimate, MISO could potentially award almost 6,750 MWs of HUCs. (2017-2018 PRA Detailed Report) https://www.misoenergy.org/planning/resource-adequacy/#nt=%2Fplanningdoctype%3APRA%20Document%2Fplanningyear%3APY%2017-18&t=10&p=0&s=FileName&sd=desc

[25] Proposed tariff, Section, 69A.7.7(a).

of HUCs to offset that risk.[26] MISO further states, "that same logic also applies to similarly situated internal resources, which could not have foreseen risks associated with a capacity construct that was created after their contracts were negotiated."[27] With respect to intra-MISO resources, the Commission has already addressed and dispensed with the issue in the course of rejecting Grandmother Agreement hedges. The Commission said:

> Therefore, consistent with the suggestion of Illinois Commission, we will allow the Grandmother Agreement provisions of section 69A.7.7(a), as conditioned below, to be in effect during a two-year transition period, concluding at the end of the 2014/2015 planning year. During this transition, LSEs with Grandmother Agreements will be able to observe the effect of the zonal auctions and the resulting Zonal Deliverability Charges, as well as have the opportunity to adjust their portfolios to account for the anticipated effect of the Zonal Deliverability Charge.[28]

With respect to external resources, MISO does not show that LSEs owning or contracting with resources outside of MISO had expectations for special transmission delivery rights to their load zone over and above the rights conveyed in their firm transmission contracts. In fact, the Commission has repeatedly made it clear that firm transmission rights do not include deliverability of capacity into constrained zones. For example, in the June 11 Order the Commission stated:

> Binding transmission constraints exist when system demand exceeds available transmission capability, which can occur irrespective of the amount of firm transmission service rights issued by the transmission provider.[29]

Given the attention that transmission constraints and resource deliverability have received in past Commission orders, the risk of zonal price separation for deliverability of external resources should have been recognized by both MISO and all impacted MISO LSEs. Even if

---

[26] March 26 Filing, Rauch Testimony, at 5.
[27] March 26 Filing, Rauch Testimony, at 6.
[28] June 11 Order, at P 113.
[29] June 11 Order, at P 73.

such risk was unforeseen prior to the Commission's June 11 Order addressing Grandmother Agreements, it would surely should have been recognized afterwards, and LSEs having contractual or ownership arrangements with external resources should have heeded the Commission's advice regarding portfolio adjustments.

C. HUCs will Effectively Erode the Value of Existing ZDC Hedges

The March 26 Filing would retain the existing tariff provision for Zonal Deliverability Charge (ZDC) Hedges that enable LSEs to reduce or avoid ZDC assessments through investment in new or upgraded transmission system facilities which increase the Capacity Import Limit (CIL) of the zone in which the entity serves load. However, MISO now proposes to grant HUC holders equal priority along with ZDC Hedge holders to excess auction revenue distribution in Stage 1.[30] When Grandmother Hedges were discontinued at the end of the 2014-2015 planning year, ZDC Hedge holders became the only recipients of Stage 1 allocations. Because ZDC Hedge holders would now be combined with HUC holders for Stage 1 revenue distribution under MISO's proposal, MISO's proposal effectively diminishes the value of ZDC Hedges.[31] Also, HUCs, as well as ZDC Hedges would be "prioritized ahead of [*pro rata*] allocation of excess auction revenues by the zonal delivery benefit (ZDB) mechanism."[32] MISO refers to this as changing "the prioritization of allocating excess auction revenue."[33] While MISO states that this changing of prioritization is needed to, "recognize the impacts" MISO's proposed tariff changes will have to "pre-existing capacity arrangements", that rationale only applies, if at all, to LSEs serving load in a MISO zone with external resources which will be included in an External Zone

[30] March 26 Filing, Proposed Tariff, Section 69A.11.12
[31] MISO explains that, under its proposal "If there are not sufficient excess revenues to fully fund all Historic Unit Considerations and ZDC Hedges, the revenues will be allocated on a *pro rata* basis to all HUCs and ZDC Hedges." Proposed Tariff, Section 69A.7.7
[32] March 26 Filing, Rauch Testimony, at 23.
[33] March 26 Filing, Rauch Testimony, at 22.

under MISO's proposal. MISO is not proposing any change to any existing MISO zone that would, even remotely, merit re-prioritization of excess auction revenue, and MISO's proposal to include Grandfathered Agreements and arrangements that predate July 20th, 2011 in HUC eligibility has no merit.

MISO states the HUC concept was initially designed to address unforeseen risks purportedly faced by LSEs having contractual or ownership arrangements with External Resources and was subsequently expanded to cover intra-MISO resources so as to "avoid creating preferential treatment for external resources".[34] But, two wrong actions does not produce a correct result. Elimination of undue preference between external and intra-MISO resources can best be achieved through rejection of the HUC proposal. As stated above, the HUC proposal creates undue preference for LSEs with HUC-eligible arrangements, discriminates against LSEs without such arrangements, and mutes the locational price signals directed by the Commission.

If the Commission, nevertheless, finds some merit in MISO's statements regarding ERZ creation and unforeseen risk for LSEs with external resources, the Commission has established a precedent for a short adjustment period in its prior ruling on MISO's Grandmother Agreement filing[35] which could be applied in this case to LSEs with historical external resource arrangements. On the other hand, there is no merit, whatsoever, in MISO's proposal for granting HUCs to LSEs with intra-MISO contractual/ownership arrangements—that matter was previously addressed by the Commission and there is no reason to resurrect it.[36]

[34] March 26 Filing, Rauch Testimony, at 22.
[35] June 11 Order, at P 113.
[36] June 11 Order, at P 113.

IV. CONCLUSION

The manner in which MISO's HUC proposal would provide capacity hedges is unduly discriminatory and mutes the operation of Commission-directed locational price signals. The desire of some LSEs to have free hedges at the expense of other load in the zone is not, in and of itself, a good reason to give them.[37] MISO's current excess capacity auction revenue allocation approach recognizes the value created by parties funding transmission that increases transfer capability into constrained zones and properly allocates the value of all remaining transmission capacity transfer capability pro rata among all network and point-to point transmission customers. The Commission has already addressed the issue of hedges for historical contractual/ownership arrangements and has provided MISO LSEs with sufficient time and opportunity to adjust their portfolios to address the potential for zonal price separation. While the Commission's June 11 Order did not specifically extend to resources outside of MISO, LSEs having contractual/ownership arrangements with such resources should have taken heed of the Commission's June 11 Order locational price signal ruling to foresee the potential for future zonal price separation. For all these reasons, the ICC recommends that the Commission reject MISO's HUC proposal.

Respectfully submitted,

/s/ Christine F. Ericson

Christine F. Ericson
Special Assistant Attorney General
Illinois Commerce Commission
Office of General Counsel
160 N. LaSalle St., Suite C-800
Chicago, IL 60601
(312) 814-3706
(312) 793-1556 (fax)

[37] *Illinois Commerce Commission et al. v. FERC*, 576 F.3d 470, at 475 (7th Cir. 2009) ("the fact that one group of utilities desires to be subsidized by another is no reason in itself for giving them their way.").

Christine.Ericson@Illinois.gov

ILLINOIS COMMERCE COMMISSION

Date: April 19, 2018

CERTIFICATE OF SERVICE

I hereby certify that I caused copies of the foregoing document of the Illinois Commerce Commission to be served this day upon each person designated on the official service list compiled by the Secretary in this proceeding, a copy of which is attached, in accordance with the requirements of Rule 2010 of the Commission's Rules of Practice and Procedure.

Dated at Chicago, Illinois, this 19th day of April, 2018.

/s/ Christine F. Ericson

____

Christine F. Ericson
Special Assistant Attorney General
Illinois Commerce Commission
Office of the General Counsel
160 N. LaSalle Street, Suite C-800
Chicago, IL 60601
(312) 814-3706
Christine.ericson@illinois.gov